

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

HERBERT L. DRAYTON,

Plaintiff,

v.

Case No. 2:06-cv-115  
HON. ROBERT HOLMES BELL

PENNY ROGERS, et al.,

Defendants.

---

**OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S**  
**REPORT AND RECOMMENDATION**

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action. The Report and Recommendation was duly served on the parties. The Court has received objections from Plaintiff and from Defendant Rogers. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made. The Court now finds the objections to be without merit.

Defendants have not satisfied their burden of showing lack of exhaustion. However, Defendant Metrish is entitled to dismissal. Contrary to Plaintiff's assertion, Plaintiff's factual allegations cannot defeat a properly supported motion for summary judgment. Plaintiff has not shown that Defendant Metrish was involved in violating plaintiff's rights.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge is approved and adopted as the opinion of the court.

IT IS FURTHER ORDERED that Defendant Metrish's motion for summary judgment (Docket #22) is granted and Defendant Metrish is dismissed from this action.

Date: August 20, 2007

/s/ Robert Holmes Bell

ROBERT HOLMES BELL

CHIEF UNITED STATES DISTRICT JUDGE